



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11991701

Date: JAN. 29, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a senior exploration geologist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner meets at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, the Petitioner has not met this burden. Accordingly, the appeal will be dismissed.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is currently employed as a senior exploration geologist for [REDACTED] in Texas.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims to meet five of these ten criteria, summarized below:

- (iii), Published materials in professional publications or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical roles for organizations with a distinguished reputation; and
- (ix), High salary or other significantly high remuneration.

The Director determined that the Petitioner met one of these criteria, related to authorship of scholarly articles. The record supports this determination as the Petitioner has provided evidence that he authored articles published in academic journals and other professional publications. On appeal, the Petitioner asserts that the Director overlooked evidence submitted in response to a request for evidence (RFE) which establishes that he meets all five claimed criteria.

Upon review, we find sufficient evidence to establish that the Petitioner meets two additional criteria. First, the Petitioner established that he has served in critical roles for [REDACTED]'s operations in Ukraine and Oman and has therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner provided detailed, credible letters from persons with direct knowledge of his duties and project outcomes, explaining why his performance in senior technical roles was critical to the outcome of the organization's [REDACTED] exploration and [REDACTED] operations in these markets. The submitted

evidence also establishes the distinguished reputation of [] and the related entities that employed the Petitioner.

In addition, we conclude that the Petitioner submitted sufficient evidence to establish that he commands a high salary from his current U.S. employer in relation to others in the same occupation and geographic area and has therefore satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ix). The Director determined that the Petitioner's stated annual salary was prospective since he had not yet been employed for a full year, despite his submission of bi-monthly pay statements from [] that corroborated his stated annual salary. The Director also did not acknowledge the Petitioner's submission of data from a Department of Labor source establishing that the Petitioner's salary exceeds the published "high salary" threshold for similarly employed workers in Texas.¹ Accordingly, we will withdraw the Director's determinations that the Petitioner did not satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix).

Because the Petitioner has established that he meets the requisite three evidentiary criteria, he has satisfied the initial evidence requirements. We will consider the evidence submitted in support of all remaining criteria, together with the balance of the record, in the final merits determination.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.²

As noted, the Petitioner is currently employed as a senior exploration geologist for [] in Texas. He received his doctorate in geological sciences from [] University [] in Ukraine in 2007 and worked as a geoscience researcher at the Ukrainian Institute of [] while completing his graduate studies. The Petitioner also served as a senior lecturer in geology at [] University from 2007 until 2009 and worked for Ukraine's largest state-owned oil and gas company from 2008 to 2009. Prior to joining [] operations in March 2019, he had worked for related companies in the [] organization in Ukraine and Oman since 2009.

¹ While we conclude that the Petitioner submitted sufficient evidence to establish that he commands a high salary based on his current U.S.-based position, we agree with the Director's determination that the Petitioner did not establish that he earned a high salary while employed in Ukraine and Oman. As noted by the Director, the record lacks comparative salary data for the Petitioner's occupation and geographic area of employment during the relevant time periods.

² See also USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

As mentioned above, the Petitioner established that he has authored scholarly articles, performed in a critical role, and earned a high salary, and submitted evidence related to his contributions to his field and one publication about him and relating to his work. The record, however, does not demonstrate that his achievements reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The record reflects that a profile of the Petitioner and overview of his professional career appeared in a 2017 book commemorating the [redacted] University [redacted]. According to a letter from the publisher, the book focused on the university's history, its scientific and educational activities, and the achievements of its researchers, and included a section "devoted to the outstanding graduates" of the institution, where the article about the Petitioner, a 2007 graduate, appeared. A letter from [redacted] who does not appear to be affiliated with the university or the publisher, states that the Petitioner's selection for this publication is "an extraordinary recognition," and emphasizes that only 300 graduates from the last 50 years were selected for the book's "outstanding graduates" section. We acknowledge that it was a significant honor for the Petitioner to be selected as a featured graduate and indicative of his considerable success in his field. The evidence does not demonstrate, however, that all former students featured in this university publication had achieved sustained national or international acclaim, or that being featured in the book signifies that any individual graduate of this university has risen to the very top of the field. The record also does not establish that this book, which according to the publisher had a publication run of 1,000 copies, can be considered a professional, major trade publication or other major medium, or that it had sufficient distribution to garner the Petitioner significant national or international recognition.

In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The Petitioner has not established that one published article about him reflects a level of media recognition that is consistent with sustained national or international acclaim.

As it relates to the Petitioner's authorship of scholarly articles, we emphasize that publication of research does not automatically place one at the top of the field.³ Here, the Petitioner provided a copy of his curriculum vitae (listing 21 "scholarly publications" dated between 2002 and 2008), copies of five of his publications, and a screenshot of *Google Scholar* search results for his name that returned five articles authored or co-authored by him. In his letter [redacted] the Petitioner's former mentor and a professor at the University [redacted] in France, refers to the Petitioner's patents and "more than twenty research articles," noting that he is "one of only a few geologists in Ukraine with such achievements in the field." However, the Petitioner did not submit additional supporting evidence differentiating his publication rate from those of others in his field, or otherwise establishing that it is reflective of one who is among the small percentage at the very top of his field of endeavor. See 8 C.F.R. § 204.5(h)(2).

³ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

Moreover, the Petitioner does not submit evidence demonstrating that he has received national or international acclaim on the basis of his publications. As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of his articles can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that other geoscientists have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122.

Here, the information provided from *Google Scholar* includes only five of the 21 articles identified on the Petitioner's curriculum vitae, and of those five, it indicates that only two have been cited by others. Specifically, the information provided by *Google Scholar* indicates that the Petitioner's 2007 doctoral thesis was cited in two other sources, while an article he published in 2005 has garnered one citation. The evidence from *Google Scholar* shows that the field has noticed his work, but the Petitioner has not established that such citations are sufficient to demonstrate a level of interest in the field commensurate with sustained national or international acclaim. See section 203(b)(1)(A) of the Act. Moreover, the Petitioner has not shown that the citations to his research represent attention at a level consistent with being among small percentage at the very top of his field. For instance, the Petitioner did not provide evidence that would allow us to compare citations to his authored works to the citation histories of others in his field of endeavor that are recognized as already being at the top in his field. In addition, he did not demonstrate how his publications have contributed to his sustained national or international acclaim as his most recent article was published in 2008, ten years prior to the filing of the petition. See section 203(b)(1)(A) of the Act.

As it relates to the Petitioner's performance in critical roles for his employers, the record contains numerous letters of recommendation discussing his work for [redacted]'s operations in Ukraine, its joint venture operation with [redacted] Oman [redacted] and his latest role with [redacted]'s U.S. operations in Texas.⁴ These letters demonstrate the Petitioner's expertise in [redacted] operations in the [redacted] industry and his value to his employers, particularly in Ukraine and Oman where the Petitioner played a critical role in the development of new projects that resulted in significant financial investments and returns. However, the testimonial evidence discussing the Petitioner's roles with [redacted] identify how the company benefited from his service in a senior geoscientist role, rather than documenting the acclaim or recognition he has received in the field as a whole as a result of his work within the organization.

For example [redacted] states that "some of [the Petitioner's] projects in Oman have been widely discussed in the industry, e.g., the well-known [redacted] project that has turned to become the most profitable [redacted] discovery in Oman and where [the Petitioner] was responsible for appraisal and volume evaluation of the field." While [redacted] notes that the Petitioner received a company award for his work on the project and the Petitioner has documented this award, the record does not elaborate on or corroborate his claim that the [redacted] project, or the Petitioner's work on the project, has been "widely discussed" or that the Petitioner garnered national or international acclaim or recognition outside the company. [redacted], who worked with the Petitioner on the [redacted] project, discusses the geological challenges presented by the Oman [redacted] the

⁴ Although we discuss only a sampling of the reference letters, we have reviewed all of the letters in the record.

innovative technique the Petitioner used to locate [redacted], and the commercial value of the project to the company. [redacted] states that the project and its results were a “notable achievement” that gained “much esteem from local and international sources.” However, he does not explain the nature or scope of this international attention or elaborate as to whether the Petitioner himself garnered any individual recognition from outside his employer based on his contributions to the [redacted] project.

Other letters describing the Petitioner’s work with [redacted] in Ukraine and in Texas are similar in that they are sufficient to establish his expertise as a geoscientist and the critical nature of his roles with the organization, but they lack any specific examples of how the field has recognized the Petitioner for his work. [redacted] Exploration Manager with [redacted] Texas office, states that the Petitioner’s “contributions to the team in his current assignment project, as well as in previous assignments, have been significant to the business and valuable to the team.” While [redacted] and other [redacted] representatives comment on the unique skills that the Petitioner has brought to his specific projects and assignments with the company, and the Petitioner provided evidence that [redacted] activities in Oman and Ukraine both garnered some media attention, the record does not establish how the field has widely recognized the Petitioner’s contributions to the [redacted] organization in a manner reflective of sustained acclaim. Without additional evidence demonstrating that his work for [redacted] has been widely recognized, the Petitioner has not shown that his achievements within the organization have received a level of acclaim reflective of one who is among “that small percentage who [has] risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2).

In addition to establishing his critical roles, the Petitioner has established that [redacted] currently pays him a high salary in relation to others in the field. Specifically, the evidence from the Department of Labor-sponsored Career One Stop website shows that “high” salaries for geoscientists in Texas, based on statewide data, start at “\$208,000+”. Although the Petitioner’s annual salary of \$233,100 falls within this high range and may demonstrate some degree of recognition of his achievements in the field, he has not submitted evidence showing his earnings are at a level reflecting that he is one of the small percentage who has risen to the top of the field.

Finally, as it relates to his original contributions, the Petitioner submits evidence related to his Ph.D. thesis and other published research, Ukrainian patents issued between 2002 and 2007 while he was a graduate student and geoscience researcher with the Ukrainian Institute [redacted] and letters of recommendation intended to speak to the significance of his scientific contributions. While publications and patents indicate the original nature of his research, they are not necessarily indicative of the major significance of those contributions, nor are they sufficient to establish that his contributions have garnered him sustained national or international acclaim in the field.

[redacted] of the Ukrainian [redacted] Institute, describes the Petitioner’s thesis as “innovative and impactful” and states that the Petitioner’s studies “became one of the main sources of practical reference for anyone who is working toward the exploration [redacted] in Ukraine.” He states that “other geologists in Ukraine consistently rely on [the Petitioner’s] groundbreaking findings in furtherance of their own research and scientific work.” Specifically, he indicates that there have been three “major citations” of the Petitioner’s work in scholarly publications related to [redacted] exploration and [redacted] published during the last decade. [redacted] draws attention to a “notable citation” to the Petitioner’s work in the 2013 monograph titled [redacted].

[redacted] He notes that in this 245-page publication, the authors “summarized all successful approaches for [redacted] exploration” and “spent four pages on referencing [the Petitioner’s] technique of measuring [redacted]” [redacted] emphasizes that the Petitioner’s dissertation research was featured because it “set a new unique method or a benchmark enabling advancement and expansion of [redacted] exploration in Ukraine.”

As noted, the citation history or other evidence of the influence of the Petitioner’s articles can also be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. However, it is not clear how three total citations to the Petitioner’s published work, even if one or more of them can be deemed “notable,” is indicative of sustained national or international acclaim. Nor does the citation evidence as a whole support [redacted]’s claim that reliance on the Petitioner’s published work is widespread among geoscientists in Ukraine or in the field at large.

[redacted] of [redacted] notes that the Petitioner, in his dissertation, “developed a theoretical basis, mathematical models and practical applications of exploration and development of [redacted]” and states that his research “greatly enhanced our understanding of the geophysical data and facilitates the exploration [redacted] [redacted].” He indicates that the Petitioner’s knowledge and experience in exploration [redacted] and of [redacted] as “currently very useful both in Ukraine and USA.” [redacted] also describes the Petitioner “as an experienced scientist with interesting results of research and industrial applications that have been used on real projects in [redacted],” but he does not indicate that their shared field recognizes the Petitioner as a nationally or internationally acclaimed figure who is among that small percentage at the very top.

[redacted] deputy director of geology at the Ukrainian Institute [redacted] specifically addresses the Petitioner’s Ph.D. dissertation and some of the patents he co-authored during his tenure as a researcher. Specifically, he states that the Petitioner’s “dissertation research of substantiation of prospects for discovering of [redacted], analysis of the thickness of overlying [redacted], and a method that allows to determine a position of [redacted] in relation to a [redacted] are original scientific contributions of major significance in the field of geology because they represent a method of finding [redacted] that are not otherwise detectable by conventional means that are employed throughout the industry.” [redacted] also notes that the Petitioner was involved in [redacted]’s early exploration activities in Ukraine and participated in two projects “which proved the first in the country usage of massive multistage [redacted].” He states that “because of immense success of the projects where [the Petitioner] played a leading role and influence they had on the whole exploration industry, this approach is now widely used by [Ukrainian [redacted] companies] on other fields, which make possible to increase [redacted] significantly.” While this evidence suggests that the Petitioner’s research and patented methods impacted [redacted] exploration and [redacted] in parts of Ukraine, the record does not establish how his contributions, or their practical application, resulted in his national or international acclaim.

We do not question that the Petitioner has made original contributions to his field and that his contributions to some high-profile projects have been beneficial to his employers and have applicability within the [redacted] industry. However, the issue is whether recognition of the Petitioner’s contributions has risen to the level of sustained national or international acclaim that has

elevated the Petitioner to the very top of his field. The Petitioner has shown that his work surrounding [] exploration and [] is important and has practical application, but not that it has earned him sustained acclaim.

The record contains a number of recommendation letters that summarize the Petitioner's achievements and offer high praise of his knowledge and expertise but do not address how he has received sustained national or international acclaim for those achievements. For example, [] states that the Petitioner's "extraordinary talent and extensive practical experience . . . place him among the very few who have reached this sort of caliber and expertise." [] of [] states that the Petitioner's "unique knowledge skills and technical experience . . . demonstrate that he is far more important to the industry and business than most others" and that he is "one of the most experienced experts I have every worked with." A recommendation letter from [] the Petitioner's former mentor, states that his "geological background, interdisciplinary expertise and teaching skills allow him to manage and deliver projects and undertake scientific enquiries in a manner that places him in the top 5% of the field." [] states that the Petitioner "is a scientist of extraordinary ability in the field of [] exploration."

Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the letters alone do not show that the Petitioner is viewed by the overall field as being among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). The letters are not accompanied by sufficient independent evidence that the Petitioner has received sustained national or international acclaim for his achievements and is widely regarded as having a career of acclaimed work. See H.R. Rep. No. at 59.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). The record reflects that the Petitioner is highly regarded by his colleagues, has enjoyed a very successful academic and professional career, and has worked on some high-profile [] projects for a distinguished employer in the field. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.